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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/532,274	04/21/2005	Lars Wase	36068	8410

23589 7590 04/17/2007  
HOVEY WILLIAMS LLP  
2405 GRAND BLVD., SUITE 400  
KANSAS CITY, MO 64108

EXAMINER
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NGUYEN, SON T

ART UNIT	PAPER NUMBER
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3643

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/17/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No. 10/532,274	Applicant(s) WASE ET AL.	
	Examiner Son T. Nguyen	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 25 January 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 April 2005 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

SON T. NGUYEN  
PRIMARY EXAMINER

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/10/05</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's argument filed on 1/25/07 regarding the election of species is persuasive; therefore, the election requirement mailed on 1/4/07 has been withdrawn.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. **Claims 1-20** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the subcombination of a milking device including a milk-transporting conduit, a pump device, and a gas supply system; however, claims 2-20 recite the combination of a milking device and various auxiliary gas consuming point. For example, claim 1 appears to only recite the milking device with the feature as stated above because the at least one auxiliary gas consuming point being claimed in functional language format (which is not considered as a positive recitation of claim limitation) such as "wherein the gas conditioning sub-system is arranged" (emphasis added on arranged); however, claims 2-20 appear to positively claiming the at least one auxiliary gas consuming point in the milking device. Therefore, the scope of the claims is inconsistent. In response to this Office Action, the claims should be amended to consistently recite either the combination or the subcombination. Note that this is just one example of the combination/subcombination inconsistency of the claims. Applicant

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should review the claims for other examples, such as for the at least one quality criterion.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. **Claims 1-20** are rejected under 35 U.S.C. 102(b) as being anticipated by Reisgies (4190021).

For claim 1, Reisgies teaches a milking device including: a milk-transporting conduit comprising at least one teat cup (near ref. 11 in fig. 1) arranged to be attached to a teat of an animal to be milked and a milk hose 12 to permit a transportation of milk from the teat to a milk-collecting member; a pump device 16, connected to the milk-transporting conduit and arranged to produce a vacuum pressure  $[(P_1)]$  for the transportation of milk by sucking milk from the teat to the milk-collecting member via the milk-transporting conduit; and a gas supply system (inside housing 26, see col. 3, lines 39-45), arranged to support the transportation of milk by supplying a gas at an atmospheric pressure level  $[(P_{atm})]$ , the gas supply system including a gas conditioning sub-system arranged to receive an unconditioned gas and in response thereto produce a conditioned gas fulfilling at least one quality criterion, and a gas inlet member (where hose 30 enters the inside unit of housing 26) arranged to introduce the conditioned gas into the milk-transporting conduit and thus permitting the transportation of milk, wherein the gas conditioning sub-system is arranged to supply the conditioned gas to at least

one auxiliary gas consuming point of the milking device outside the milk-transporting conduit. Note that the gas conditioning sub-system of Reisgies has the structure that is capable of being arranged to supply gas to any components of the milking system that require gas, since Applicant merely states functional language, i.e. "is arranged", of the gas conditioning sub-system.

See MPEP § 2114 which states:

A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from the prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. Ex parte Masham, 2 USPQ 2nd 1647

Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than functions. In re Danly, 120 USPQ 528, 531.

Apparatus claims cover what a device is not what a device does. Hewlett-Packard Co. v. Bausch & Lomb Inc., 15 USPQ2d 1525, 1528.

As set forth in MPEP § 2114, a recitation in a claim to the material or article worked upon does not serve to limit an apparatus claim.

The [a)statements of intended use or field of use, b)"adapted to" or "adapted for" clauses, c) "wherein" clauses, or d) "whereby"]clauses are essentially method limitations or statements of intended or desired use. Thus, these claims as well as other statements of intended use do not serve to patentably distinguish the claimed structure over that of the reference. See In re Pearson, 181 USPQ 641; In re Yanush, 177 USPQ 705; In re Finsterwalder, 168 USPQ 530; In re Casey, 512 USPQ 235; In re Otto, 136 USPQ 458; Ex parte Masham, 2 USPQ 2nd 1647.

For claims 2-20, Reisgies' gas conditioning sub-system is capable of being arranged to supply gas to gas consuming points thereto produce a conditioned gas fulfilling at least one quality criterion, such as a constant-pressure valve 25,28,29, a

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pneumatic member to remove a teat cup cluster (col. 6, lines 25-63), a compressor 20, at least one secondary gas consuming point (any one of the components as shown in fig. 1 can be a second gas consuming point), first and second cabinets (the housings storing the components such as refs. 26,57), a cleaning member, a heating member, a cooling member, a filter 32 (wherein the filter of Reisgies can be "arranged to permit gas from outside and inside an ammonia free building), a sensor (col. 3, lines 22-25), a pressurized gas container (inherently taught in Reisgies in order to supply gas to the whole system from air pipe 31 into the system inside housing 26), and a pressure regulator (col. 3, lines 35-54). In addition, Reisgies' conditioned gas can exceeds the atmospheric pressure level by control of the flow control element inside the housing, thus, is capable of pressurizing the interior volume of the cabinets. Note that all of these components as claimed by Applicant are not positively claimed because they are merely part of the functionality of the gas conditioning sub-system being arranged to supply gas to these components. See the above comment regarding functional recitation.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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7. **Claims 10-11,18-19** are rejected under 35 U.S.C. 103(a) as being unpatentable over Reisgies as applied to claim 1 above, and further in view of Borgman et al. (5085172).

Reisgies teaches wherein the at least one quality criterion relates to the temperature of the conditioned gas (note again the functional recitation to which the gas conditioning sub-system can be arranged to receive gas in response to at least one quality criterion). However, Reisgies is silent about the gas conditioning sub-system includes heating and cooling members adapted to heat the unconditioned gas to a particular minimum temperature.

Borgman et al. teach a milking system in which they include heating and cooling members 9,14,16,17,32,36,41,42 (see also col. 2, lines 21,27-38) pumped through the milking system by compressed air unit 11 (col. 1, lines 52-55), to which the gas emitted by the unit 11 going through these hot/cold conduits or the system will be heated or cooled due to the conduits being heated or cooled with hot or cold water. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ heating and cooling members as taught by Borgman et al. in the milking device of Reisgies in order to not only heat or cool the gas flowing in the system but also to clean components in the system.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Son T Nguyen  
Primary Examiner  
AU 3643